

Submission by Sytel Limited to the
US Federal Communications Commission
In Respect of
Rules and Regulations Implementing the
Telephone Consumer Protection Act of 1991

CG Docket No. 02-278

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1. Introduction

Sytel Limited is a manufacturer of software for the outbound marketplace based in the United Kingdom. It produces predictive dialing software that is used in many countries around the world, including the US. Sytel has campaigned for many years for the responsible use of predictive dialers. It has worked closely with a number of national marketing organisations, in a number of countries, to help put codes of dialing practice in place. It has also been a strong advocate of ‘do not call’ systems for use by consumers not wishing to receive outbound calls. For the past two years it has produced a free newsletter focused on best outbound practices (www.outboundfocus.com) that is read widely around the world.

This paper focuses on what predictive dialers actually do and makes some recommendations for how they might be used in future in the US.

2. Non-Agent Calls and Recommendations

Predictive dialers take a number of actions to deal with those calls (non-agent calls) that it either believes or knows cannot be delivered to an agent, at the time a consumer answers, or attempts to answer their phone, in response to an outbound call from a call center. These call types are analysed below. Such calls should be very small in number in a well-controlled dialer. They arise because, in seeking to boost agent productivity, dialers launch more calls than there are call center agents (actually or potentially) available to talk.

Any action to regulate predictive dialers MUST consider the full range of such calls; if this doesn't happen, then restriction on one type of non-agent call only (e.g. Abandoned Calls – see (iv) below), is very likely to lead to an (unexpected) increase in the incidence of another, as dialers attempt to compensate for loss in productivity. See especially (i) below.

(i) Hangups on Ringing Calls. The phone rings a few times and then stops before a consumer has a chance to reach it.

Historically, some dialer practice has been to launch more calls than is reasonably required to present available agents with a live call each, and then with no more agents available, any remaining calls still ringing have been hung up on, and not recorded as calls abandoned by the dialer. This has meant many calls being terminated after only several seconds of ringing. The US Direct Marketing Association (DMA) addressed this by setting a minimum ring time of 12 seconds. The UK DMA in its updated code of practice for dialers, announced in January 2002, has set a comparable figure of 15 seconds. Survey work that Sytel has done in the US suggests that the practice of early hangups is still widespread.

This class of call is often overlooked by bodies seeking to control what dialers do, probably in part because no one expects dialers to do this, but they do. A case in point is California. This activity was overlooked when Representative Herb Wesson proposed Bill AB870 to restrict dialer activity. The California Public Utilities Commission (CPUC) was given the task of implementing the law passed, in its rule R02-02-020, but has no legal jurisdiction to ban this class of call. The upshot has been an influx of dialer vendors indulging in this practice into California, offering compliance with whatever (other) rules the CPUC sets.

Recommendation: We recommend that this type of non-agent call should be restricted to allow consumers a reasonable length of time to answer the phone. We believe that this time should be a minimum of 15 seconds, and not 12 seconds as in the US DMA guidelines.

(ii) 'Dead Air' Calls. Consumers answer the phone, and there is no one there to respond to them, so they wait for seconds, often many, and may hang up before an agent comes on the line.

One, or both, of two things is happening:

- a) **The dialer is holding up the call while it tries to determine if the response is an answering machine or a live person.**

Since it can take several seconds or more to test for answering machines, then this means that the same delays apply in connecting agents to live calls. Whether or not live calls are being delayed by screening for answering machines, dialers have historically often kept callers waiting anyway, when agents have not been available to match up with answered calls. This has been done in the hope or expectation that called parties will not hang up and instead wait for an agent to come on the line and talk to them. If called parties hang up, then such calls are not registered as abandoned calls, since the dialer has not abandoned them. Quite contrary to popular belief, called parties in general in the US do not hang up quickly, but instead stay connected trying to determine what is happening, waiting, on average, for over 10 seconds before hanging up, if no agent is available.

The US DMA guidelines set a maximum time for two seconds for a call to be held up, from the time that the consumer's phone goes offhook. The equivalent figure set in the UK is one second. At two seconds, consumers will often be aware of a 'predictive pause'. Immediately this happens, the quality of the call declines.

When the US guidelines were developed, the two second limit allowed some scope for answering machine detection to occur, an activity that the US outbound industry has long seen as being an indispensable aspect of predictive dialing. Building on the reaction of consumers, especially in the US, to 'dead air', the UK DMA recently took the view that this issue should be consumer-driven, and that any delay in abandoning a call, beyond one second, was unacceptable.

- b) The call is being held up by the switch, or other telephony software, in order to detect answering machines and prevent these calls going through to agents.**

There is a substantial body of opinion in the US that supports this. See especially the submissions made to the CPUC in California in respect of R02-02-020. We strongly recommend that the FCC consider the counter arguments made by Dial

America in their submission to the FTC earlier this year, filed at <http://www.ftc.gov/bcp/workshops/tsr/participants.htm>

We believe that the loss of productivity (measured in terms of talk time per agent hour) that results when answering machines are connected to agents in call centers is not significant when set against the improvement in call quality that results from having live calls connected to agents immediately i.e. not exposing consumers to ‘dead air’ whilst detection is done by the switch. Or to put it differently, if you are going to sell to someone, don’t keep them waiting whilst deciding whether they might be a machine. Although we find the testimony of Dial America reasonably compelling in this regard, we nevertheless note that there appears to be a total dearth of independent empirical studies in the public domain on the effectiveness of answering machine detection done by switches. We would hope that call centers and other bodies with a vested interest in this issue might see it in their interest to encourage such studies to be done and made available to the FCC.

Recommendation: In the absence of any research showing both the efficacy and acceptance of ‘dead air’ calls on the part of consumers, we believe that the maximum hold up on a call, before it is connected to a live agent, should be two seconds, with consideration being given to a lesser figure.

(iii) Playing of Messages. There is no agent available so the dialer plays a message to avoid 'dead air' on the line, or having to abandon the call.

We understand that the playing of messages is generally banned, not just under US DMA codes of practice, but in the US by Congress, under the Telephone Consumer Protection Act (TCPA), as long ago as 1991.

The idea of playing messages rather than have a dialer abandon a call was considered by both the Kansas and the Californian legislatures in the past year. The Kansas legislature allowed it. The Californians dropped the idea on the basis that it was in conflict with

other law (the TCPA?).

Without any controls, it is not a good idea, since a dialer can dial as many numbers as it likes, connect live calls to waiting agents, then play messages to everyone else. The extent of non-agent calls is potentially limitless.

Recommendation: We believe that the playing of messages might possibly be seen as an alternative (not an addition) to abandoning calls (see (iv) below), but there would need to be similar rules on the extent of messages (relative to live calls), as well as on their length and content.

(iv) Abandoned Calls. Consumers answer the phone and the dialer abandons the call.

These are abandoned calls as per DMA codes. All DMA codes stipulate that they must be measured as a percentage of live calls, namely calls answered by consumers. Many users still use the 'all calls' measure, often in ignorance. The differences in definition are important. For example, if the percentage of live calls is 50% (25%), then an abandoned target of 2% that is expressed as a percentage of 'all calls' (i.e. two abandoned calls for every 100 calls dialed), is actually 4% (8%) when measured correctly as a percentage of live calls.

The maximum levels set for this class of call, measured as a % of live calls, by DMAs in both the UK and the US is 5%. We believe that an appropriate figure in the US would be 5%, or perhaps slightly lower. We also believe that any attempt to set a level as low as 1%, as has been contemplated by the CPUC, is probably counter-productive. The vast majority of predictive dialing technologies have not been designed to cope with this kind of restriction, and such a rate might lead to considerable non-compliance. See also 3. below.

Recommendation: Provided that appropriate consumer safeguards are in place (see 4. below), we believe that a small number of abandoned calls is reasonable, allowing dialers

to produce the substantial business savings this can lead to. We also believe that the appropriate way to measure abandoned calls is as a percentage of live calls. We believe that the maximum level for abandoned calls should be 5%, or perhaps slightly lower. We would also strongly recommend that before a lower level should be set, the FTC give due regard to the huge reduction in non-agent calls of all types that will occur if restrictions on other 'non-agent' calls, as suggested in this paper, are made.

3. The Extent of Non-Agent Calls

We have commented in other submissions made to both the FTC and the CPUC this year on the almost total absence of any meaningful analysis of the extent of non-agent calls in the US that is available in the public domain for debate by interested parties.

From some independent but unpublished work that we have done, we believe that for every live call connected quickly to an agent in the US – say in not much more than a couple of seconds, there is probably at least one non-agent call, as defined herein. What this means is a non-agent call rate running at 100%. We are aware that a number of large operators in the marketplace (see for example submissions made to the CPUC this year) have indicated that they are generating non-agent call rates at just a fraction of this level. Unfortunately, the good example set by these operators is not typical of the marketplace as a whole.

We would hope that the FCC will have regard to the real extent of non agent calls in the US, with the aim of reducing them to just a small fraction of what consumers are experiencing today. We believe that a 5% (or perhaps slightly lower) limit on abandoned calls and a restriction on the other non-agent call types, as suggested in this paper, would lead to this, and would virtually eliminate the very considerable consumer concern over the extent of all such calls in the US.

4. Consumer Safeguards

Sytel believes that the dialing recommendations above are necessary, but not sufficient. We also believe that actions in the following areas, are necessary to create a healthy outbound market.

(i) **‘Do Not Call’**. All US consumers should have access to a ‘do not call’ scheme(s) that allows them not to receive unsolicited calls of any kind. Such a scheme(s) should allow consumers to sign up easily, provide for low-cost ease of use by call center operators, and have clear and enforceable penalties, for non-compliance. We have no particular views on how such a scheme(s) should be constituted, or whether it/they should be based on any existing schemes, such as those run by the DMA or individual states. We regard such a scheme(s) as essential.

(ii) **Caller ID**. Call centers wishing to use predictive dialers should provide effective Caller ID. We see this as being desirable, though not necessarily mandatory if an effective "do not call scheme" is in place.

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